

1 I make no value judgements as to who on either side of, of
2 this -- but this could be very costly for individuals and it
3 wouldn't be serving the public or the individuals if we went
4 on, and on, and on with this proceeding.

5 JUDGE SIPPEL: It is true. It is true. Is there
6 any-- is there anything anybody can add to that right now? I
7 mean, are you, are you prepared to talk about settlement
8 Mr. Hilding?

9 MR. HILDING: I -- we're still -- as far as I'm
10 concerned, we had a discussion briefly the other day. I'm,
11 I'm open, Your Honor.

12 JUDGE SIPPEL: All right, Mr. Casciato?

13 MR. CASCIATO: We, we're happy to talk, Your Honor.
14 We just haven't gotten anywhere.

15 JUDGE SIPPEL: Well, have you gotten down to -- I
16 mean, is there a question of that there's, there's -- is, is,
17 is there something that's holding it up? Because the only
18 thing you can settle for is expenses. I mean, is there some
19 argument over what the expenses are?

20 MR. CASCIATO: No, Your Honor, we haven't even
21 gotten to that question.

22 JUDGE SIPPEL: Haven't even gotten to that point?

23 MR. CASCIATO: No, Your Honor, in my opinion.

24 JUDGE SIPPEL: Well, you, you, you both are here
25 today and you, you have flights out, I take it, later today.

1 You're certainly willing, you're, you're able, you're, you're,
2 you're invited to use this conference room after we close the
3 record here to continue your discussions, and I'll be in my
4 office. If there's anything that I can do to help facilitate
5 those discussions, I'm available. But Mr. Goldstein's got an
6 excellent point. You're here. This would be an opp-- it
7 would be a waste to, to, to not take this opportunity to
8 continue those discussions. And, again, let me know what the,
9 what the results of those conversations are when you get back
10 to California.

11 MR. HILDING: Certainly.

12 MR. CASCIATO: And I --

13 JUDGE SIPPEL: I want a joint report. I'll give you
14 a date on that.

15 MR. GOLDSTEIN: And I will be available in my
16 office. I have a, a meeting to attend right now for the
17 Commission, but I'll be available after 11:30 if anybody -- if
18 we can pound heads together in any way, shape, or form. May I
19 be excused at this point, Your Honor?

20 JUDGE SIPPEL: You certainly may, Mr. Goldstein, and
21 thank you very much.

22 MR. GOLDSTEIN: Thank you.

23 JUDGE SIPPEL: Excellent timing, excellent timing
24 for that suggestion, because it is getting expensive,
25 gentlemen and ladies. I mean, you can see how expensive this

1 gets. Again, I'll set a date for that, but a joint report on
2 settlement possibilities. Okay. Again, I'm going to accept
3 Mr. Hilding's representation that he has complied with your
4 category "L" to the best of his knowledge, and you can pursue
5 that again briefly with him on a deposition.

6 MR. CASCIATO: Thank you.

7 JUDGE SIPPEL: And if you have -- you feel you have
8 grounds for further relief, you can file a motion, Mr.,
9 Mr. Casciato.

10 MR. HILDING: Your Honor, may I ask one question?

11 JUDGE SIPPEL: You, you certainly may.

12 MR. HILDING: Should I not have a received a copy,
13 though, of this motion to compel?

14 JUDGE SIPPEL: Well, that you certainly should have
15 and I, I --

16 MR. HILDING: It bothers me --

17 JUDGE SIPPEL: The, the response --

18 MR. HILDING: -- because I respond to everything.

19 JUDGE SIPPEL: Well, it -- he's got on your
20 certificate of service, that is, Mr. Casciato's firm has on
21 the certificate of service the copy having been mailed to
22 you -- at P.O. Box 1700, Morgan Hill, California?

23 MR. HILDING: May I see a copy of the document?
24 Would that be possible?

25 MR. CASCIATO: Sure.

1 JUDGE SIPPEL: Mr. Casciato's going to give you a
2 copy.

3 MR. HILDING: This isn't the same as the, as the
4 supplementary document --

5 JUDGE SIPPEL: No, it's not. It's not.

6 MR. HILDING: Okay.

7 JUDGE SIPPEL: It is not the same. It's an entirely
8 different document.

9 MR. HILDING: Your Honor, I have never seen this
10 document. Now, I'm just wondering if -- I had questions
11 regarding Mr. Casciato's supplementary document production
12 request. If, if that was supposed to have been contained in
13 the same envelope -- because I did raise a question as to why
14 I was given a certificate of service date of the 14th of May,
15 and it's postmarked clearly Washington, DC, the 17th. Now,
16 this came in an envelope "Keck, Mahin and Cate." Now, I
17 subsequently found out why that happened apparently, and
18 Mr. Casciato can respond to you, but there's a gentleman named
19 Lou Paper at the law firm of Keck, Mahin and Cate, who
20 represents a client that has the same viewpoint with respect
21 to some of my concerns that I brought up in other areas, and I
22 called him the other day after I realized that this was the
23 same law firm, and I said -- because I'm considering different
24 counsels at this point, and I said, "First of all, I want to
25 make sure I don't have another conflict of interest situation

1 here," and he told me that apparently he and Mr. Casciato have
2 known each other for quite some time, and if I understood him
3 correctly, Mr. Casciato was in their office that day and the
4 secretary -- he'd asked the secretary for an envelope and
5 that's when this was mailed out. So, apparently, what may
6 have happened, even though the certificate of service is the
7 14th, the postmarked date says the 17th, whoever put,
8 supposedly, these two documents in the same envelope, this one
9 never got in there.

10 JUDGE SIPPEL: What is "this one"? The motion to
11 compel?

12 MR. HILDING: Oh, I'm sorry, motion to compel,
13 because I would have responded to this.

14 JUDGE SIPPEL: All right, all right. Let, let me
15 hear from Mr. Casciato on this, too.

16 MR. CASCIATO: Your Honor, I was in Washington that
17 week, so when I wrote the motion to compel, the supplementary
18 document request, I wrote them in Washington in the law
19 offices of Keck, Mahin and Cate, and being typed up there, and
20 I asked the secretary who signed the certificates of service
21 if she would mail them. So it is possible that she did not
22 put the motion to compel in the same envelope with the
23 document, document supplement request, although I think it's
24 equally possible that she did, and the date is the date
25 that -- the actual -- I believe, actually, that the documents

1 | were actually filed before the due dates, and to the degree
2 | that it's possible that it was mailed on Monday instead of a
3 | Friday, I'm sure it could have happened, and I guess to the
4 | degree that we're now talking subsequently, I don't know
5 | necessarily Mr. Hilding's been prejudiced by this because
6 | under the category to which we will tie the documents, we
7 | should have had them earlier, we should rule upon any
8 | pejorative -- that would have been under oath, that were not
9 | taken under oath, so it doesn't seem to be substantively -- at
10 | this point.

11 | JUDGE SIPPEL: Well, it may be moot but, I mean, he
12 | has -- Mr. Hilding's got a right, certainly, to get all the
13 | papers that are filed in the case, and I -- from what I'm
14 | seeing here, he's got all -- there's, there's two questions
15 | that really there should be explanation for. One is -- I have
16 | a copy of a supplementary document production request. Now,
17 | if, if I understand what you're saying -- I'm not sure who I'm
18 | getting this from, but I think you agreed with this,
19 | Mr. Casciato, that the two documents were intended to go in
20 | the same envelope at the time that you were here in
21 | Washington?

22 | MR. CASCIATO: Right.

23 | JUDGE SIPPEL: All right, now, one of them, the
24 | motion to compel, has a date written in, certificate of
25 | service says that it was mailed on the 14th of May. However,

1 the supplementary document, which is the one that Mr. Hilding
2 received --

3 MR. CASCIATO: Uh-huh.

4 JUDGE SIPPEL: -- has no date in the certificate of
5 service that I have.

6 MR. CASCIATO: Oh, really?

7 JUDGE SIPPEL: No, and then, yet, it, it was also
8 put in an envelope. If it was intended to be mailed on the
9 14th, why was there -- why was it put in an envelope that went
10 out on the 17th?

11 MR. CASCIATO: I, I haven't got an answer for you,
12 Your Honor. All I can tell you is that I, I asked the, the
13 secretary to serve --

14 JUDGE SIPPEL: Well, you know, that's -- you've got
15 to be awfully -- I don't have to lecture you on that because
16 you know under these new rules that we have, that a date of 2
17 or 3 days -- I mean, I, I've had parties who have lost out on
18 integration because they've been off 2 or 3 days on something,
19 and, you know, that, that -- these dates have just got to be
20 meticulously followed.

21 MR. CASCIATO: Okay, Your Honor.

22 JUDGE SIPPEL: I don't have flexibility on these
23 things. I mean, I really don't. Now, both parties are now on
24 notice about that, but particularly you, Mr. Casciato,
25 because, I mean, that just shouldn't happen. Mr. Hilding is

1 being put to tr-- I am putting Mr. Hilding to a -- to, to many
2 tasks that he's going to be required to undertake, and he
3 certainly is entitled to receive everything, and he's entitled
4 to receive everything that's represented to be mailed on the
5 14th that it's actually mailed on the 14th and not on the
6 17th, and, I mean, that just can't be -- that can't happen
7 again.

8 MR. CASCIATO: Okay, Your Honor.

9 JUDGE SIPPEL: Now --

10 MR. HILDING: Your Honor?

11 JUDGE SIPPEL: I -- go ahead. I think that's the
12 end of the issue.

13 MR. HILDING: This --

14 JUDGE SIPPEL: It is the end of the issue.

15 MR. HILDING: I would like to get a copy of this if
16 Mr. Casciato would be --

17 JUDGE SIPPEL: Mr. Casciato will get you a copy, I'm
18 sure, before he leaves Washington.

19 MR. HILDING: We have a couple of other date issues
20 that were wrong, too, that we need --

21 JUDGE SIPPEL: Mr., Mr. -- all right, well, I, I
22 want to get one thing at a time here.

23 MR. HILDING: Okay.

24 JUDGE SIPPEL: Mr. Casciato was also correct that,
25 really, the information in the motion to compel was the exact

1 information that the rules required you to produce, so the
2 motion to compel was duplicitous [sic] to that extent.

3 MR. HILDING: Right.

4 JUDGE SIPPEL: However, there's nothing wrong with
5 filing a motion. If you're not getting what you're entitled
6 to, you file a motion. So, I, I don't have a problem with him
7 filing the motion; I have a problem with how it may or may not
8 have been communicated to you. Now, I'm finished with those
9 documents for the time being.

10 MR. HILDING: Thank you.

11 JUDGE SIPPEL: All right. if there's more problems,

1 Mr. Hilding is asking for.

2 MR. CASCIATO: No, Your Honor, I think to a degree
3 it -- they may be moot given the stipulation --

4 JUDGE SIPPEL: I hope they are, yeah.

5 MR. CASCIATO: -- given the stipulation, but I --

6 JUDGE SIPPEL: All right, I hope they are. Well, I
7 think you've made out good cause for those, for, for those
8 motions, Mr. Hilding. I'm going to grant those motions to
9 you --

10 MR. HILDING: Thank you, Your Honor.

11 JUDGE SIPPEL: -- and I'll get an order out to that
12 effect, but the main thing is, is that there was a stipulation
13 filed on -- or, or it's dated May 21st; it was filed on
14 May 24th, and in it, it's represented that depositions will be
15 scheduled at a mutually convenient time and date, and my
16 questions to the parties are have those deposition schedules
17 been agreed to?

18 MR. CASCIATO: Yes, Your Honor, we --

19 JUDGE SIPPEL: Do you have something that's going to
20 go?

21 MR. CASCIATO: We've agreed to June 28th in my
22 office, Your Honor.

23 JUDGE SIPPEL: Okay. June the 28th, and that will
24 be for both parties?

25 MR. CASCIATO: Yes, Your Honor.

1 JUDGE SIPPEL: All right, now, you've talked --
2 that's fine. That's -- I will expect those to go forward.

3 MR. CASCIATO: Miss, Miss Hughes would go in the
4 morning and Mr. Hilding would go after --

5 JUDGE SIPPEL: He'd go in the afternoon?

6 MR. CASCIATO: Um-hum.

7 JUDGE SIPPEL: All right. June 28th I have nothing
8 scheduled and I expect to be in my office. If you have
9 problems with these definitions, you can call me up until 4
10 o'clock DC time. So I would suggest if you're having -- if
11 you, if you anticipate problem areas, that you take the
12 problem areas up front. All right?

13 MR. HILDING: Can I ask a question, Your Honor?
14 Four p.m. Eastern Standard Time would be 1:00 p.m. California
15 time, and since Mrs. Hughes will be deposed in the afternoon,
16 what if I have a question or something comes up? What would
17 be my course of action?

18 MR. CASCIATO: Miss Hughes, Miss Hughes was going to
19 be deposed in the morning.

20 MR. HILDING: Oh, is that the way we --

21 MR. CASCIATO: Right.

22 MR. HILDING: Oh, I'm sorry, I'm -- my mind was
23 still on the -- I see, okay.

24 JUDGE SIPPEL: Well, I would suggest what you do is
25 after you finish with Mrs. Hughes that you, you initi-- you

1 start, Mr. Hilding, on the record and go through preliminaries
2 when you feel that there might be some problems, if need be.
3 I mean, I'm available the next day. You can always, you
4 know -- and you can convene on Tuesday morning if there's some
5 areas that you can't cover with her. I mean, if you're really
6 having a problem.

7 MR. HILDING: Thank you.

8 JUDGE SIPPEL: That's it for depositions, then.
9 That's good. You mentioned, Mr. Hilding, that, in passing,
10 several times, that you were looking for a DC counsel, or
11 you're looking for a communications counsel, I should say. Is
12 that still ongoing or have you made a decision on that?

13 MR. HILDING: I have not made a decision,
14 Your Honor. It, it hasn't been the highest priority. I have
15 been involved in many proceedings before and I've seen a lot
16 of money that has unnecessarily gone out, in my opinion, and
17 I, I will make the decision when to bring in counsel when I
18 feel it's absolutely necessary, and I haven't made that
19 decision yet.

20 JUDGE SIPPEL: That's your prerogative. No, I'm,
21 I'm --

22 MR. HILDING: Yeah.

23 JUDGE SIPPEL: -- I'm just asking the question.
24 It's your prerogative.

25 MR. HILDING: And I may have mentioned it in passing

1 the day we were on a conference call together. I can't
2 remember, but if -- and, again, we are going to, my
3 understanding is, explore possible settlement but I feel I'm
4 being very judicious looking down the long-term pike, if,
5 pike, if that's absolutely necessary, so --

6 JUDGE SIPPEL: All right. All right, then that --
7 does anybody have a -- any, anything more on depositions? I,
8 I mean, that's it as far as --

9 MR. HILDING: No, Your Honor, sir.

10 JUDGE SIPPEL: All right. The next thing is the --
11 there's a motion to strike integration, and an opposition to
12 the motion to strike was filed. I've read the documents
13 carefully and to the extent that -- what I'm going -- I'll
14 tell you exactly what I'm going to do, and to the extent that
15 that's either granting or denying the motion to strike, that,
16 that's the way it will be but I do not intend to go down in
17 this ruling in parse out everything in the integration
18 statement that I think should not be there. You presented
19 your situation. You've laid your whole, really, you've laid
20 your whole case theory and, and what you may possibly be
21 seeking to introduce in this case out pretty well in that
22 integration statement. The only thing that's relevant in an
23 integration statement are facts about the -- and really broad
24 facts -- about the extent which the owner would be integrated
25 into management, and since this is a sole party, that's,

1 that's easy. You've already represented that in your
2 integration statement. Claims for local residence, civic
3 activities, broadcast experience, minority preference, then
4 the, the other qualitative credits for auxiliary power or an
5 AM daytime of preference -- anything that's in that
6 integration statement that relates to any of those categories,
7 I would permit evidence on. If it doesn't fall into those
8 categories, I'm not going to permit you to produce on it.
9 With respect to your claimed civic activities that are going
10 to be relied upon for relevance at the hearing, again you've,
11 you've, you've laid out your civic activities for which you
12 claim credit in, in a very extensive way. What you're going
13 to have to be required to do is reduce this to a sworn written
14 testimony in accordance with my pre-hearing conference order
15 before the hearing. In other words, you're going to have to
16 write out your testimony. That's -- if you, if you go back
17 and look at my pre-hearing conference order, there's specific
18 datelines that are spelled out for when things have to be
19 done, Mr. Hilding. One of those things is a sworn signed
20 testimony of yourself and of Mrs. Hughes that will be
21 exchanged. Now, in that you will lay out what your civic
22 activities are that you will claim credit for, however, there
23 has to be a showing, you have to identify clearly the town or
24 the city for which each of those activities has -- was
25 performed, and it's only civic activities that have been

1 performed in a service area that I can give you any credit
2 for.

3 MR. HILDING: Under the current rules.

4 JUDGE SIPPEL: That's all I'm dealing with, is
5 current rules. I can't deal with anything that's not current.
6 I can't deal with rules that were, and I can't deal with rules
7 that might be. I can only deal with current rules.

8 MR. HILDING: May I ask a question, Your Honor?

9 JUDGE SIPPEL: You may.

10 MR. HILDING: And, again, I think I made several
11 references in different documents that my understanding was
12 that -- you mentioned one of the items which is the auxiliary
13 power preference, and I don't want to redundant but my
14 understanding is that in the individual case-by-case
15 situations, that is how that particular preference came into
16 being and, again, I'm not an attorney but I, I -- there's a
17 5USC, 553 Sub-B, Sub-A, that apparently, unless I
18 misunderstood something, gives the ability that -- to amend
19 policy without notice of rule-making or comment, and that's
20 basically what I'm seeking in not only the integration
21 statement, but the motion to enlarge issues or the, the real
22 big --

23 JUDGE SIPPEL: All right, let me, let me just answer
24 to that real --

25 MR. HILDING: Okay.

1 JUDGE SIPPEL: I think what I can give you is a
2 quick -- the short answer to that, and I've had this in, in
3

1 MR. HILDING: Thank you.

2 JUDGE SIPPEL: All right, do you understand?

3 MR. HILDING: I do.

4 JUDGE SIPPEL: Okay. So I'm only going to hear
5 evidence on what is relevant to existing rules of the
6 Commission. Anything that you feel should be changed, you're
7 going to have to submit that in a separate proffer to say that
8 if I had permitted you to do so, you would prove such and
9 such. All right?

10 MR. HILDING: Thank you.

11 JUDGE SIPPEL: That should not be lengthy. If -- I
12 will -- as I'm articulating the order, I'm -- I will limit
13 that to the number of pages, but it should be brief. It
14 should be sufficient enough so that if you lose, and you go on

1 MR. HILDING: Thank you.

2 JUDGE SIPPEL: All right?

3 MR. HILDING: Um-hum.

4 JUDGE SIPPEL: I don't think there's anything much
5 more to say with respect to the motion to strike to the extent
6 that my ruling will eli-- will, will grant the motion to
7 strike, so be it, but, as I say, I'm looking at your
8 integration statement as a, as a wish list, and I'm going to
9 tell you very specifically the relevant areas that I'm going
10 to receive evidence on, and I want, again, to make that clear,
11 and this applies to both parties. If you're going to claim
12 civic -- and I've run into this problem time and time again
13 with litigating this issue, is that I can't figure out from
14 the evidence what, what town, city, county, or village it is
15 that the activity was conducted. It's very important to put
16 that in and tie that identification in with it being within
17 the relevant service area. So that if you're going to -- you
18 know, if you been on, on -- if you've served on a committee
19 for such-and-such heart association over a period of 12 months
20 in such-and-such year, that, that description should also
21 include where that work was done, where is that association
22 situated, what town, what city, and is that town or city
23 within the service area, and how long were you doing it, and
24 what was your position. Were you just a member of the
25 committee; were you a chairman of the board; or were just a

1 volunteer? And how many, approximately, how many hours a
2 week, a month, or a year did you, did you do the activity,
3 perform the activity?

4 MR. HILDING: One question, Your Honor. If, if I
5 understand this, if, in my situation, none of the civic
6 activities occurred within the one mi-- well, I guess, service
7 area of Windsor, then am I to understand I would not include
8 any that were outside that service area?

9 JUDGE SIPPEL: Not relevant.

10 MR. HILDING: I understand.

11 JUDGE SIPPEL: Same for Mrs. Hughes, it's just not
12 relevant. Now, they say in this, what will be called a
13 "proffer of evidence" that you want to submit, you can -- you
14 don't even have to be as detailed as I'm outlining it here. I'm
15 giving you the requirements that I'm imposing -- that I am insisting
16 upon in order for me to receive relevant evidence in this
17 case. With respect to what you want to represent as a
18 proffer, and this is, this is traditionally the way a proffer
19 is done, it's going to be done in a broader context. You
20 don't have to list all of those things. You can just
21 generically describe that you've done certain things over a
22 certain period of time in areas outside the service area, and
23 you believe that these things should be considered.

24 MR. HILDING: Correct.

25 JUDGE SIPPEL: Now, that's -- do you understand?

1 That would be a separated document called a "proffer."

2 MR. HILDING: I understand that, and I believe my,
3 my problems with the existing rules, and not, not your,
4 yourself, Your Honor, but they made it very clear, too, and
5 thank you for outlining the procedure. I know what the
6 ultimate, you know, procedures are down the line and you made
7 it very clear what, what I need to find to do and I thank you.

8 JUDGE SIPPEL: Okay. The next item I have is the
9 petition to enlarge the issues. There has been a, a petition
10 filed by Mr. Hilding on the 10th of May. There's been an
11 opposition filed by Mr. Casciato, and the date on that was the
12 25th of May; and then the reply came in on the 4th of June.
13 Okay, Mr. Hilding, the first thing you complain about in your
14 reply is that Mr. Casciato was 1 day late filing these.

15 MR. HILDING: From what I could determine, yes.

16 JUDGE SIPPEL: All right, his opposition. Have you
17 seen the reply, Mr. Casciato?

18 MR. CASCIATO: Yes, sir.

19 JUDGE SIPPEL: Okay. What's your position with
20 respect to the count on dates?

21 MR. CASCIATO: I think they're timely, Your Honor.
22 I think under 1.294 and 1.4 the date it was due was the 25th.

23 JUDGE SIPPEL: How do you count that? What does it
24 say, 10 days?

25 MR. CASCIATO: Ten, ten plus three, and not count

1 the intervening weekends. I don't have a calendar in front of
2 me, Your Honor, so I couldn't do it.

3 JUDGE SIPPEL: Okay. Well, I have -- I, I, I -- go
4 ahead, Mr. Hilding. You respond to that, because really --

5 MR. HILDING: Okay, I'm looking at the -- my reply
6 to opposition to the motion to enlarge issues. My
7 understanding at the time was it was due at the Commission on
8 the 10th and if we can bring it from that point the 10 days plus

1 question that it was mailed on the 25th in your mind?

2 MR. HILDING: No. It was mailed from San Francisco
3 at this time.

4 JUDGE SIPPEL: On the 25th.

5 MR. HILDING: Correct.

6 JUDGE SIPPEL: All right.

7 MR. HILDING: And that was 1 day late in my -- from
8 what I can tell.

9 JUDGE SIPPEL: All right, that's, that's a different
10 issue.

11 MR. HILDING: Oh, okay.

12 JUDGE SIPPEL: There's no, there's no quarrel
13 about --

14 MR. HILDING: Oh, no. No.

15 JUDGE SIPPEL: -- the fact that it was mailed on the
16 25th, Mr. Casciato has said that, and it was also filed on the
17 25th.

18 MR. HILDING: Correct.

19 JUDGE SIPPEL: It's just a question of the 1 day.
20 This should -- again, it, it may sound as a relatively minor
21 issue but I agree with Mr. Hilding's count. I mean, if I
22 count 10 days, it -- the 10th -- not, not counting the day of
23 the 10th, if you counted 10 days after that it falls on the
24 23rd, and the 24th is -- the 23rd is a Sunday; 24th is a
25 Monday.

1 MR. CASCIATO: Well, Your Honor, I haven't got a
2 calendar in front of me but my understanding of the rule is
3 you count 10 days starting the -- I guess it would be the
4 11th.

5 JUDGE SIPPEL: That's what I'm doing.

6 MR. CASCIATO: Right, and --

7 JUDGE SIPPEL: I counted the 11th.

8 MR. CASCIATO: And you do not count the intervening
9 week-- weekend days under the rule.

10 JUDGE SIPPEL: Well, that's -- you'd have to show me
11 where it says that. On the 5-day, you don't, right.

12 MR. CASCIATO: May I borrow your rules, sir?

13 JUDGE SIPPEL: Yeah. Let's go off the record a
14 minute.

15 (Whereupon, a brief recess was taken.)

16 (End of Tape 1.) (Start of Tape 2.)

17 JUDGE SIPPEL: Mr. Casciato has referred me to
18 Section 1.4, Subdivision "H," which, which says that -- I'm
19 paraphrasing now but -- if the filing period to a response of
20 pleading is 10 days or less, an additional 3 days excluding
21 holidays will be allowed for filing a response, and then
22 there's an example 11 given under that which doesn't precisely
23 me-- meet this situation because it talks about 7 days, but
24 since the rule says 10 days, and the opposition is due 10
25 days, I see Mr. Casciato as having it right. I can understand

1 | where you're having difficulty seeing that, Mr. Hilding, in
2 | light of what you've seen under Subsection 7. It says that if
3 | a filing period is less than 7 days, intervening holidays
4 | shall not be counted but "H" says the filing period for a
5 | response is 10 days or less. Now, so, we're really into a
6 | situation where there is a 7-day period. We're in the 10-day
7 | period, and I don't know if this going to sound too clear or
8 | look too clear in the transcript but to me it makes sense that
9 | the 10-day, the 10-day requirement is the one that's
10 | applicable to this situation, and that does provide excluding
11 | the count of holidays in the mailing process. All right. In
12 | any event, I was prepared to rule on this even without the
13 | opposition --

14 | MR. HILDING: Okay.

15 | JUDGE SIPPEL: -- if it turned out you were correct,
16 | Mr. Hilding, and even without Mr. Casciato's opposition it
17 | seems to me, based on what I have said before about where I --
18 | what I feel my jurisdiction is in this case, that those issues
19 | would not be added. They're really issues that are seeking
20 | policy determinations at the trial level and there are some
21 | additional reasons as well --

22 | MR. HILDING: Okay.

23 | JUDGE SIPPEL: -- that I have. One is that, again,
24 | we've been applying these rules in a technical sense, and we,
25 | we really have to under the, under the new hearing procedures

1 that the Commission has enacted. One, there's been no
2 affidavit filed in support of the issues that you're seeking;
3 secondly, the issues that you're seeking are therefore found
4 to be speculative at best. The new procedures require not
5 only specific allegations of fact that are sufficient to
6 support the issue requ-- the adding of the issue requested but
7 you've also failed to identify the documentary evidence that
8 you would need to prove those issues, which the new rules
9 require. In other words, if you're going to seek new issues
10 in the case, you also have to add in right in that same
11 document a request for the documents that are relevant to it.
12 Again, the issues that you're seeking are really properly the
13 subject of rule-making. There is an ongoing rule-making
14 proceeding entitled "Re-examination of the Policy Statement on
15 Comparative Broadcast Hearings," and that is GC Docket
16 No. 92-52, and the notice is at 7FCC Record, page 2664. That
17 was released on April the 10th of 1992.

18 MR. HILDING: And what was the, the current status
19 of that?

20 JUDGE SIPPEL: I'm not giving you the status report
21 on it.

22 MR. HILDING: Oh.

23 JUDGE SIPPEL: I don't know what the status of it
24 is, exactly. That is saying there is a rule-making
25 proceeding.